No. D.

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th March 1953

S.R.O. 507.—WHEREAS the election of Shri Sardarmal Lalwani, as a member of the Legislative Assembly of the State of Bhopal from the Huzur Constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Pandit Sheo Narain Vaid, Son of Pandit Munnalal, Mohalla Itwara Gate, Bhopal;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BHOPAL

IN

ELECTION PETITION NO. 94 OF 1952

(ELECTION PETITION CASE NO. 1 OF 1952)

PRESENT:—

Shri N. V. Sathaye—*Chairman.*

Shri W. Y. Radke & Shri M. C. Nihalani—*Members.*

Pt. Sheonarayan Vaidya—*Petitioner.*

Vs.

Sardarmal Lalwani—*Respondent.*

Shri Md. Yakub & Shri R. Punjwani—for *Petitioner.*

Shri S. C. Nihalani—for *Respondent.*

ORDER

(PASSED ON THE 27TH FEBRUARY, 1953)

1. This election petition calls in question the election of the respondent Shri Sardarmal Lalwani as a member of the Bhopal Legislative Assembly during the last general elections, from Huzur Constituency.

2. The petitioner was a rival candidate and he lost by 93 votes.

3. The petitioner claims that but for the illegalities committed by the Election authorities and the corrupt practices resorted to by the respondent, the electorate verdict would have been for him. He, therefore, prays that the election of the respondent be set aside and he should be declared as duly elected.

4. Illegalities cited by him are: that the village Amjhara situate in Huzur Constituency, consisting of 183 voters was wrongly excluded and was not attached to any one of the 12 Polling Stations in which the Huzur Constituency was Subdivided. Further voters of Misrod and Habibganj Railway areas were not permitted to vote at the Misrod Polling Station as the lists pertaining to these voters did not form a part of the Electoral Roll supplied to the Presiding Officer at the said Polling Station. These voters were 67 in number. The petitioner by these illegalities was deprived of the votes of village Amjhara and also the above said Railway areas as all these voters had pledged themselves to him.

5. As regards corrupt practices the petitioner gives the following instances:

(a) speeches were made in three different meetings on three different occasions wherein the respondent's partisans had made false statements as to the character and the conduct of the petitioner. The sum and substance of these statements was that the petitioner helps cow slaughter and if elected, would promote it. Further that the petitioner was a man of Nawab and was purchased by the latter to carry out his wishes in the forthcoming regime and that the petitioner was not a Hindu.

These statements, the petitioner maintains, are false and at any rate, the respondent and his agents did not believe them to be true. These speeches resulted in a large number of voters being misled who did not vote for the petitioner.

(b) That the respondent and his agents used hired and procured vehicles for the conveyance of the Electors to the Polling Stations and back to their villages.

(c) That the respondent exceeded the limits prescribed by law in the matter of Election expenses. He engaged more persons on payment than permitted by law and also engaged persons not permitted by law.

(d) That the Return of Election Expenses lodged by the petitioner is false in material particulars.

(e) That a systematic appeal was made at the instance of the respondent to the voters by means of religious oaths and persuations, to vote for the respondent and refrain from voting for the petitioner. As a result of these appeals many voted for the respondent while many others, who would have voted for the petitioner, refrained from voting altogether.

6. The respondent, so far as the corrupt practices are concerned, does not admit a single allegation.

7. So far as the allegations in regard to the illegalities are concerned, he denies that the Lists of Voters of Misrod and Habibganj Railway Areas were not supplied to the officers posted at the Misrod Polling Station. He denies that any voters of these areas were not permitted to exercise their votes. He states that most of the voters of these areas being Railway Servants, were not available on the day of Polling having been transferred to some other places. Some of the voters were dead and some others were otherwise absent.

8. The respondent admits that Amjhara village was not included in Huzur Constituency, but he states that this cannot be challenged now. Delimitation of Constituencies is done by the order of the President and it was under the orders of the President that Huzur Constituency was sub-divided into 12 Polling Stations comprising of certain areas. The petitioner should have got this mistake rectified earlier. Not having done it then, he is stopped now. Besides the respondent denies that the voters of this village would have voted for the petitioner. He claims that they would have given their votes to him, hence he had actually applied that this village be included in Huzur Constituency. The respondent lastly, challenges the validity of the deposit. He contends that the receipt of deposit to be enclosed with the petition was not a valid one. A valid receipt was submitted by the petitioner only in June 1952. Since a valid receipt which is so essential to the validity of the petition was sent for the first time in June, 1952, the petition should be deemed to have been made only in June and as such the petition is time-barred.

9. The petitioner filed a rejoinder on the 3rd of October, 1952. His explanation in regard to the deposit is worth noting. In substance he admits having enclosed a receipt of a deposit of Rs. 1,000/- dated the 17th March, 1952, in the first instance with the petition which was not in accordance with the provisions of law, but he states that the Treasury challan was filled by a Clerk of the Chief Electoral Office, Bhopal, and subsequently the Election Commission, by its letter dated the 28th May, 1952 gave a period of 10 days to the petitioner for submitting a fresh valid receipt. The petitioner complied with the suggestion of the Election Commission and sent a fresh valid receipt in favour of the Secretary to the Election Commission as required by law. As such the petitioner contends that the original defect in the receipt was condoned by the Election Commission and same could not be canvassed now.

10. On these contentions the following issues were raised. Our findings thereon are shown in juxtaposition:—

Issues	*Findings*
1. (*a*) Has the petitioner deposited Rs. 1,000 by way of security in favour of the Chief Electoral Officer, Bhopal ?	Yes.
(*b*) Is it required to be in favour of the Secretary, Election Commission of India, New Delhi, under the law ?	Yes.
(*c*) Is the deposit, therefore, to be deemed to have been made in June, 1952 ?	Yes.
(*d*) Is the petition, therefore, barred by time ?	Yes.
(*e*) Was the deposit made with a clerical error, as stated in para (3) of the reply dated 3-10-52, and was the defect corrected at the instance of the Election Commission, and within time ?	Yes. Letter form the Secretary, D/28-5-52
(*f*) If so, does the removal of the defect in the deposit affect the tenability of the application ? If so, how ?	No. It is not tenable.
2. Is the election of the respondent void or liable to be set aside on the following grounds or any of them *viz.*:	No. No.
(A) (*a*) Was a list of the Polling Stations showing the names of the villages attached to each of the stations supplied by the Chief Electoral Officer to the petitioner on the 1st January, 1952.	Not proved. Not proved
(*b*) Was the village Amjhara situate in Huzur Constituency ? Was it liable to be shown as attached to Bagroda or Amravad Polling Station or any other Station on the ground of its being within two miles from either ?	Not proved. Not proved.
(*c*) Even if so, what is the effect of the failure of the petitioner to question the correctness of the lists before or after publication of the lists of Voters ? Is the petitioner estopped from raising the plea after the publication of the result of the election ?	He cannot challenge the constitution of the Constituency. Yes.
(*d*) Was any application made by some of the Voters of mouza Amjhara to the Chief Electoral Officer on the 28th January, 1952 ? Even if so, what effect ?	None of the voters but only by the respondent.
(*e*) Did the voters or any of them from mouza Amjhara desire and promise to vote for the petitioner or to the Jansangh candidate ?	Does not arise.
(*f*) Did the non-inclusion of the village Amjhara in any of the Polling Stations of the Huzur Constituency cause a loss of 183 or any of the votes from the village to the petitioner ?	Does not arise.
(*g*) If otherwise, was the petitioner entitled to be elected in the result ?	No.
(*h*) Is the result of the Election materially affected by the non-inclusion of the village Amjhara in the Polling Stations of the Huzur Constituency ?	Does not arise.
(B) (*a*) Was a portion of the Voters' List pertaining to the voters of Habibganj and Misrod Railway Stations not attached to the Electoral Roll of the Huzur Constituency, but to that of Gouharganj Constituency, though the areas were attached to Misrod Polling station of the former ?	No. It was attached to the Roll at Misrod in Huzur Consituency.
(*b*) Did the voters or any of them of these areas go to Misrod Polling Station to cast their votes ? Were they not allowed to cast their Votes ?	Not proved. Not proved.

Issues	*Findings*
(*c*) Did they promise and desire to vote for the petitioner alone ? Was the petitioner, therefore deprived of the 67 votes or any of them ?	Not proved. No.
(*d*) Were most of the voters of the areas transferred from there and could not go for voting for want of time ?	Not proved.
(*e*) Were the promises even if any, illegal ?	Does not arise.
(*f*) Was any complaint made by the petitioner regarding the voters of the above areas to the Presiding Officer ? If not, is the petitioner entitled to take this plea now or is he estopped from doing so ?	No. No. Does not aise.
(C) (*a*) Did the respondent himself or his agents, by his connivance, give publicity to false statements believed by him to be false or not believing them to be true in meetings of the different dates, if any, as alleged in Schedule 'C' ?	No. No.
(*b*) Did such statements, if any, relate to the personal character or conduct of the petitioner and reasonably calculated to prejudice the prospects of election of the petitioner ?	Does not arise.
(*c*) Have they resulted in a large number of Electors being misled and not voting for the petitioner ?	Does not arise.
(*d*) Is Bagia Sitaldas situate in Huzur Constituency ? If not what effect ?	Does not arise.
(*e*) Is the plea not tenable for want of proper particulars ? If so, what effect ?	Does not arise.
(D) (*a*) Did the respondent or his agents use, hire or procure vehicles for the conveyance of electors to the Polling Stations from the villages and back, as stated in Schedule D ? If so, what effect ?	No. Nil.
(*b*) Was car No. 1588 hired or used in the Respondent's election ? Were the other three cars mentioned in the Schedule D the property of the respondent ?	No. Yes.
(*c*) Does the plea suffer and is it untenable for want of proper particulars ?	Does not arise.
(E) (*a*) Has the respondent exceeded the prescribed limit of Election expenses and engaged more than the permitted number of persons and engaged on payment persons other than those permitted by law, as stated in Schedule 'E' ?	No.
Or,	
(*b*) Was Ramgopal clerk a servant of the Respondent in the latter's ordinary employment and was he paid Rs. 57/12/- for expenses for touring in connection with the Election ?	Yes.
(*c*) Was Hari Ram merely helping the respondent and was he not paid anything ?	Yes. Not paid anything.
(F) (*a*) Is the Return of Election Expenses lodged by the respondent false in the material particulars set out in Schedule 'F' ?	No.
(*b*) Was the respondent or any of his agents spent a sum of Rs. 25/12/- for purchase of Election Rolls ?	No.
(*c*) Is the result of the Election materially affected by such practices ? Are they corrupt practices ? Has the respondent, at any rate, incurred a disqualification and is his Election void on that ground ?	No. Yes. Does not arise.
(*d*) Was the amount paid to Shri Ansari on 7-1-52 and 10-3-52 for petrol and oil ? Were the petrol and oil distributed to the agents and workers of the respondent and used by himself ? Is the payment divided into three parts and separate receipts for each part obtained on 17-3-52 ?	Yes. Yes.
(*e*) Was Jamnaprasad paid Rs. 135/2/- for refreshments but not shown by over sight in Parts A, C and D of form 26 ?	Yes. The receipt is slightly discrepant from the Return.

Issues	*Findings*
(G) (*a*) Did the respondent, his agents and other persons, with his knowledge, connivance and instigation, or of his agents, make an appeal to the Voters to vote for him and not for the petitioner by means of religious oaths and persuations, as stated in Schedule 'G' ?	Not proved.
(*b*) Was a large number of Electors led thereby to vote for the respondent and were the other Electors refrained from voting for the petitioner ?	Does not arise.
(*c*) Is the majority for the respondent procured by means of this practice and is the election materially affected by it ?	No.
(H) (*a*) Did the respondent secure the services of persons on payment to canvass and secure votes for himself, as set out in Schedule 'H' ?	No.
(*b*) Were these payments, if any, not shown in the Return of Election Expenses of the respondent ?	Does not arise.
(*c*) Has this practice, if any, materially affected the result of the Election ?	Does not arise.
(*d*) Is the plea not tenable in law for want of proper particulars ?	Does not arise.
(I) (*a*) Even if the corrupt practices stated above were not committed by the respondent or his agents or by other persons, with his or the agents' knowledge and connivance, still was the election of the respondent procured and induced by such corrupt practices ?	No.
(*b*) Is the respondent's election therefore, materially affected by them and would the petitioner have secured majority but for such practices ?	No.

11. *Issues Nos.* 1(*a*) *to* (*f*).—This issue relates to non-compliance by the petitioner with the provisions of Section 117 of the Representation of People Act, 1951 and the effect thereof. The facts underlying this issue are hardly in dispute. It is an admitted fact that the receipt of deposit dated the 17th March, 1952 (Ex. P. 11-A) enclosed with the the petition was not in favour of the Secretary Election Commission as required by section 117 of the Act. It is equally admitted that the Election Commission itself treated this as non-compliance with the provisions of section 117 of the Act. The Election Commission, by its letter dated the 28th May, 1952 (Ex-C-2), pointed out the defect to the petitioner and asked for a fresh receipt in favour of the Secretary to the Election Commission and under correct head of account within 10 days of the date of letter. It is also the case of both the parties that the fresh receipt, as suggested by the Commission, was sent to the Commission only in June 1952 (fresh receipt dated 3rd June 1952—Ex-P-11).

12. On these facts the petitioner contended in his rejoinder that the Election Commission, having asked for a fresh receipt and having accepted it, it must be deemed to have condoned the original defects and as such the tenability of the petition on this ground could not be questioned.

13. The respondent on the other hand in his written-statement contended that a valid receipt having been sent for the first time in June, 1952 the petition must be deemed to have been presented only in June 1952 when the valid receipt was furnished. Therefore the petition is out of time. In our judgment both the contentions are unsound. There is no question of condonation and equally so there is no question of limitation.

14. The petitioner's counsel suggested three things in his arguments. One was that the provisions of section 117, Representation of People Act were not mandatory. He explained that the word 'shall' used in section 117 of the Act is not to be regarded as peremptory mandate but as something directory. He argued that in several enactments the word 'shall' has been interpreted to be merely directory. In support of his argument he cited (1) *R. B. V. M. Jakatdar* Vs. *V. D. Kotle and others* (Case No. 40 at Page 218, Soabia's Election Cases, Volume I), (2) *Shyam Chand Basak* Vs. *Chairman, Dacca Municipality* (I.L.R. 47 Calcutta, 524) and (3) *Pandurang Narayan Adha* Vs. *Ramchandra R. Panditrao* (A.I.R. 1930 Bombay, 554), He also referred us to Interpretations of Indian Statutes by Jagdish Sawrup at page 274 and Interpretation of Laws by Crawford, article 270, at page 537. From this, he wanted us to deduce that strict compliance with the letter of the law was not essential and that when the petitioner enclosed a receipt showing a deposit of Rs. 1,000/- although not in favour of the Secretary to the Election Commission as required by section 117 of the Act, he sufficiently complied with the provisions of section 117 *ibid.*

15. His second argument was that the word 'shall' governs merely the word 'enclose' and as soon as it was proved that a receipt was enclosed with the petition, the petitioner had done his part and even if the receipt enclosed did not answer to the exact description given in section 117, it was not a case of non-compliance with the provisions of section 117 of the Representation of People Act.

16. Thirdly, he argued, that in the event his first two arguments are found unacceptable and it is held that the provisions of section 117 of the Act, are mandatory and also that what is essential under section 117, is not merely enclosing some kind of receipt, but the receipt of the description given in the section, the resulting non-compliance with section 117 was condoned by the Secretary to the Election Commission and as such should not be interfered with under the peculiar circumstances of the case. It was suggested that undoubtedly the Tribunal had power, under section 90(4) of the Act to dismiss the petition for non-compliance with the provisions of section 117 of the Act despite the action of the Election Commission, but considering the fact that the petitioner had ultimately complied with the requirements of section 117 the Tribunal may properly refrain from exercising its powers of dismissal of the petition.

17. On the respondent's side, on the other hand, it was argued, that section 117 was absolutely mandatory. The use of the word 'shall' was sufficiently indicative of the mandatory nature of the provision. The learned counsel referred us to the definition of the word 'shall' as given in Stroud's Judicial Dictionary, at page 1855. He also repudiated the suggestion of the petitioner's counsel that the word 'shall' governs merely the word 'enclose' and not the words following it. As regards condonation by the Election Commission, he vehemently pressed that there could be no room for condonation so far as non-compliance with the provisions of section 117 of the Act is concerned and the Election Commission in this case had not in fact condoned the non-compliance. He, therefore, argued that the defect of non-compliance in the matter of enclosing a valid receipt, as required by section 117 of the Act was fatal to the case of the petitioner.

18. Now as regards the first contention of the petitioner's counsel, that the provisions of section 117 of the Act are merely directory, there is no doubt that in some cases the Courts have given the word 'shall', which is ordinarily mandatory, and the word 'May', which is normally directory, their opposite meaning considering the particular context in which they were used, but it is also the settled principle of law that the Court, should not depart from the literal meaning of such words, unless the intention of the Legislature, to give them a different meaning, clearly appears. This principle is succintly stated in *People* Vs. *Suteliffs* [7 N.Y.S.(2) (431)], from which the following excerpt is taken:—

> "It is a rule of Statutory Construction that where a statute is framed in terms of command and there is no indication from the nature or the wording of the Act or surrounding circumstances that it is to receive a permissive interpretation it will be construed as peremptory."

See in this connection, Interpretation of Laws by Crawford at page 516.

19. Need for construction often arises whether a particular provision of law is mandatory or directory, because most statutes are of comprehensive and detailed nature and as such are likely to contain many requirements which pertain to minor non-essential particulars, and if every minor or un-essential detail of a statute were considered imperative, then almost every act, whether performed by the individual or public officer, may be rendered invalid or ineffective. But at the same time care has to be taken that essentials are not ignored. It is, therefore, always necessary to determine what is essential and what is non-essential. The basic test, to determine whether the requirement is essential or not, is to consider the consequences of the failure to follow the statute. If the failure to follow the statute results in serious consequences, then the requirement must be considered mandatory. This basic test is sometimes supplied by the express legislative enactment itself. Therefore, if the Legislature itself provides that the failure to meet the mandate of a statute would have consequences in the shape of rendering the act performed invalid, then the problem of determining, whether the provision is mandatory or directory, is removed from the Courts. The Courts, under such circumstances, are bound to treat the provision as mandatory, but on the other hand if there is no express legislative enactment regarding the consequences to follow from the non-compliance of the legislative command, then it becomes the function of the Court to ascertain from the wording, nature and surrounding circumstances whether the Legislature had the intent to treat the provision as mandatory or otherwise. We are fortified in our view by the Commentary of the learned Author in his Book the Interpretation of Laws by Crawfords at page 518.

20. Judged in the light of this basic test it becomes clear that non-compliance with the mandate contained in section 117 of the Act, which has the result of dismissal of the petition, would be a non-compliance with the mandatory provision because the Legislative intent regarding the seriousness of the provisions contained in the section 117, is unequivocally evidenced by the use of the word 'shall' in section 117 which is normally mandatory and the enactment of section 85 of the Act laying down in clear terms the dismissal of the petition as a penalty for non-compliance of the provisions of section 117 of the Act. Under the circumstances, in the present case, in the face of a clear and unambiguous expression of the legislative intent by the Legislature itself it is beyond our power to look to something else and arrive at the conclusion that the provision contained in section 117 is a directory one. By ignoring section 85 of the Act, which is an unmistakable evidence of the mandatory nature of section 117 and by taking into consideration the extraneous circumstances, we will be in fact trying to defeat the express intent of the Legislature and to our minds, by so doing, we will be making a corrupt use of our powers.

21. In this view, therefore, the first point raised by the counsel for the petitioner has no force. The provisions of section 117 of the Act are mandatory. The cases cited by him are all without exception those wherein the Legislature has not expressly laid down anything as to the result that might follow the non-compliance of the provisions in question. We have no quarrel with the principle that in such circumstances, it was open to the Courts in those cases, to ascertain whether the particular provision was meant by the Legislature to be mandatory or directory, from the nature and the wording of the Act and also the surrounding circumstances in spite of the use of the word 'shall' or 'must'. But in the case on hand an inquiry into the possible legislative intent is not permissible as it is already laid down by the Legislature itself. More than once we invited the learned counsel for the petitioner to cite even one authority wherein consequences following non-compliance may have been laid down by the Legislature, but the Court took a different view and treated the provision as directory. The counsel frankly admitted that in spite of his diligent search in the case law, he was unable to lay his hands upon any such authority, and we think there could be no such authority.

22. Regarding the second point of the petitioner's counsel, that the word 'shall' governs only 'enclose', we think the interpretation sought to be placed is ludicrously absurd. If this interpretation were accepted, even enclosing a piece of blank paper would be a sufficient compliance and the results will be so absurd that it is difficult even to imagine. The grammatical and also reasonable construction would be that the entire set of words following the word 'enclose' is governed. We, therefore, reject this contention as wholly destitute of legal merit.

23. The contention of the petitioner's learned counsel regarding condonation runs counter to the plain wording of section 85 of the Representation of People Act which provides as follows:

> "Petition when to be dismissed—If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition:
>
> Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure."

It will be seen that the Election Commission has been given no discretion so far as non-compliance with section 117 of the Act is concerned. The language of the enacting section is so plain and clear that it admits of no doubt or exception. It is clearly enjoined on the Election Commission to dismiss the petition for the words are 'shall dismiss' if there is non-compliance with section 117. In this case it is clear from the letter of the Election Commission dated the 28th May, 1952 (Ex-C-2), relied upon by the petitioner himself, that the petitioner had not complied wth the provisions of section 117 inasmuch as the receipt enclosed was not in favour of the Secretary to the Election Commission as required by the said secton. It is clear to us that on concluding that there was non-compliance with section 117 of the Act, there was no other course left to the Election Commission, but to take the step of dismissing the petition. It was not within the competence of the Commission to permit the time to the petitioner to remove the defect. The action taken by the Commission was clearly not warranted by law and should not be permitted to stand. If the Legislature had intended to invest the Election Commission with the power of affordng time to the petitioner to remedy the defect of non-compliance with section 117, such an intention could have been manifested by making a provision to that effect in the section. This power of rejecting the petition in limine on account of non-compliance with section 117 etc. is analogous to the powers of a

Court to reject the plaint for certain reasons under order BII Rule 11 of the Code of Civil Procedure. Under Order VII, rule 11 of the Code, the Legislature has expressly given power to the Court to grant sometime to the plaintiff to make good the deficiency of Court-fee in case court-fee paid on the plaint is found to be insufficient. A similar power could have been given to the Election Commission to grant time to the petitioner to supply the requisite receipt before dismissing the petition, but such a power has not been given. Instead the Legislature had issued an unqualified command to dismiss the petition. And obviously section 117, as it is worded, could not permit such a power to be given to the Commission. For section 117 requires that receipt should be enclosed with the petition. But if the Commission could give time to the petitioner to furnish a valid receipt, such a receipt, if produced afterwards, can never be said to be enclosed with the petition as required by section 117 of the Act. Therefore, the action of the Commission in granting time to the petitioner, to submit a valid receipt, is not only not warranted by the language of section 85, but is definitely inconsistent with section 117 inasmuch as the later production of the receipt is not equivalent to enclosing it with the petition. We have already held that section 117 is mandatory and as such strict compliance is essential. Stroud's Judicial Dictionary, 2nd Edition at page 1855, enumerates the instances of peremptory provision and one of the instances given is regarding deposit for security for costs and this supports the view that we have taken.

24. The proviso to section 85 makes the whole thing clear beyond any doubt. It clearly indicates that the Legislature has given discretion to the Commission only in the matter of condoning delay in presenting the petition within the period prescribed for it. It, therefore, necessarily follows that the Commission had no discretion left in the matter of other defaults namely non-compliance with section 117 etc.

25. During the course of arguments when it was pointed out to the petitioner's counsel that the Election Commission had no discretion except in the matter of condoning delay in presenting a petition within time, the learned counsel conceded that it was so, but he pleaded that his also was a case of presenting the petition beyond time. He argued that although he presented the petition on 5th April, 1952, within the time permitted by law, the petition was not accompanied by a valid receipt as enjoined by section 117 of the Act and therefore his petition was no petition within the meaning of section 81 of the Representation of People Act and as such it cannot be deemed to have been presented on the 5th of April, 1952 and it can be deemed to have been presented only on the 3rd of June, 1952 when he actually submitted a receipt as required by section 117 of the Act. In that view, he submitted, his petition should be deemed to have been presented beyond time and as such the Commission could, under the proviso the section 85, condone the delay.

26. It will be seen from the rejoinder that the petitioner filed, that this was not his case as pleaded by him. It will further be seen from the correspondence between him and the Election Commission that this was not the aspect in which the matter was viewed either by the petitioner or by the Election Commission. The pleadings and the documents of the petitioner clearly show that all along it was the non-compliance with the provisions of section 117 that was attempted to be explained by the petitioner having no reference to the question of limitation. The proviso lays down that the petitioner must satisfy the Election Commission that he had sufficient cause for his failure to present the petition within time and then the Election Commission may, in its descretion, condone such failure. Before the petitioner could satisfy the Commission about his failure to present the petition in time, he must admit that there was failure on his part and then the Commission should consider that failure. In this case at no stage has the petitioner done that and naturally the Commission has not considered the question from the angle of limitation. What a petition is and what it should contain; how it should be presented and when it should be presented, is dealt with in section 81 to 84 of the Act. Whether a particular document is a petition can only be construed by a reference to these section. Therefore, considering these section, there is no doubt that the document that reached the Election Commission, on the 5th of April, 1952, was a petition from the petitioner calling in question the election of the respondent and having reached the Election Commission within the period prescribed for it, it cannot be denied that a petition from the petitioner was presented within time. If this petition did not conform to the other essential formalities o fthe law, it can be a bad petition on that account, but it cannot be no petition on that account. A petition bad in law may well be within time. That there is no connection between nin-compliance with section 117 and presentation of a petition within time is obvious from the Legislature treating section 81

of the Act, which includes the petition being presented within a prescribed period, and section 117, separately, in section 85 of the Act. If compliance with section 117 was necessarily a question of limitation, section 117 would not have been separately mentioned. We, therefore, hold that the petition was presented within time and only it was defective on account of non-compliance with section 117 of the Act. As such the Election Commission had no power to condone the defect.

27. The question still remains if the Commission had no power, has it really condoned it? Strictly speaking, there is nothing to show except by a mere implication that the Commission has condoned the non-compliance. We do not agree with the learned counsel for the respondent that an express order to that effect was necessary, but at the same time when we consider the letter of the Election Commission (Ex-C-2) wherein it is added that the letter was without prejudice to the law governing the case, we feel that this was a conditional condonation, if any. And in our judgment, even in the case of limitation wherein the Commission has power to condone the delay, there is no room for conditional condonement. There can be no condonement without prejudice. The words 'without prejudice' convey only one idea that no discretion has been exercised as would be imperative even under the proviso. For the proviso postulates that the Commission should be satisfied and then exercise its discretion in favour of the petitioner. That means, at least so far as the commission is concerned, the matter should have been satisfactorily explained and the Commission should have been decided about it. As it is, the Commission does not seem to have been decided about it, but only it has pushed the matter further leaving the question entirely open. This militates against the view that the Commission exercised its discretion in favour of the petitioner. From this point of view, it can not even be said that the Commission has even condoned the default. But even if we hold that the Commission has condoned it, we are of the view that it was beyond the competence of the Commission. Therefore, the condonation, if any, would be without any legal effect.

28. Holding as we do, that neither did the Commission condone it nor could it condone, what is the position? We think the clear position is that we should exercise our discretion in setting aside something which is illegal. We will be giving effect only to the plain provisions of section 85 of the Act, by dismissing the petition for non-compliance with the provisions of section 85 of the Act.

29. We cannot part with this issue without saying something about the decision of Mehasana Tribunal reported at page 2262 of the *Gazette of India Extraordinary* cited before us. This case is distinguishable. The receipt that was originally enclosed was, after explanation of the petitioner, accepted as a valid receipt, by the Election Commission. It is not so in this case. The receipt initially enclosed with the petition was definitely held, by the Election Commission as not in conformity with the provisions of section 117 of the Act as it was not made in favour of the Secretary to the Election Commission. This receipt was returned to the petitioner as invalid and a fresh receipt was demanded from the petitioner. The fresh receipt was submitted only in June 1952. In the case cited, the receipt was in favour of the Secretary to the Election Commission and was of the Bank that was intimately connected with the sub-treasury. The challan was submitted to the Treasury Officer who endorsed it and the amount was paid in the account of the Mehasana Treasury to the Bank of Baroda which passed the receipt. Under the circumstances, the Election Commission rightly accepted the receipt as in conformity with the provisions of section 117 of the Act. But in the present case the first receipt which was enclosed, was considered bad in law by the Commission itself. In other word in the present case there was no compliance with section 117 of the Act. As regards the interpretation of the word 'may' used in section 85 of the Act, we, with great respect, agree with the Mahesana Tribunal that it is not equivalent to 'shall', but in the view that we have taken of the receipt and the legal and factual aspect of the alleged condonation by the Commission, we do not feel bound either to allow the illegality to stand. No doubt we have discretion under section 90(4) of the Act, but that discretion has to be exercised properly and legally. We cannot be said to exercise our discretion properly if we shut our eyes to the obvious illegality involved in the failure to dismiss the petition which was the only course open under section 85 of the Act, under the circumstances of the present case.

30. We, therefore, decide this issue against the petitioner and hold that the petition is not maintainable on account of non-compliance with the provisions of section 117 of the Act.

31. *Issue No. 2.*—This issue was not pressed by the petitioner.

32. *Issue No. 2(A) (a).*—We hold that it is not proved that a list of the Polling Stations, showing the names of the villages attached to each of the Stations, was supplied by the Chief Electoral Officer, to the petitioner on the 1st of January, 1952. This is a mere averment in the petition. The respondent has denied it. There is no evidence in support of this. Even the petitioner himself has not said anything about it in his own evidence. Otherwise also this plea seems to be immaterial.

33. *Issue No. 2(A) (b).*—There is no evidence to substantiate this plea. We, therefore, hold that it is not proved.

34. *Issue No. 2(A) (c).*—In our opinion the petitioner cannot challenge the Delimitation of the Constituencies Order of the President. We have already given our decision on this point by our order dated the 3rd December, 1952, passed on the application by the petitioner for amendment. It is not necessary to repeat the reasons again.

35. *Issue No. 2(A) (d).*—It is admitted by the petitioner that he did not make any application and no voter of mouza Amjhara applied for the inclusion of village Amjhara. It was the respondent who applied, but this he did only just before the polling. Under the circumstances, even the application of the respondent had no legal effect.

36. *Issue No. 2(A) (e).*—If the non-inclusion of village Amjhara in Huzur Constituency from which alone the petitoner contested; can not be challenged, there could arise no question of any of the voters of that village having promised to vote for the petitioner or the Jansangh candidate. In view of our order dated the 3rd December, 1952, holding that the petitioner could not challenge the non-inclusion of village Amjhara in Huzur Constituency, the petitioner gave up his witnesses who might have supported him on this point. At present, therefore, there is no evidence, except the word of the petitioner, to prove that it was so. We, therefore, hold that the allegation covered by this issue does not arise.

37. *Issue No. 2(A) (f).*—For similar reasons as stated under issue No. 2(A) (e), we hold that this issue is not proved.

38. *Issue No. 2(A) (g).*—No the petitioner was not entitled to be elected in the result.

39. *Issue No. 2(A) (h).*—Does not arise. It was excluded by the President's Order. The President's Order could have been got rectified and it not having been got rectified, the order governs the parties and is binding on the petitioner.

40. *Issues Nos. 2(B) (a) and 2(B) (b).*—This issue covers the allegation of the petitioner that voters' Lists of Misrod and Habibganj Railway Areas were not attached to the Electoral Roll sent to the Presiding Officer of Misrod Polling Station; consequently the voters of these areas were not permitted to vote. To prove this allegation, the petitioner has examined himself (P.W. 1), Shri Gulam Kibria, Presiding Officer, Misrod Polling Station (P.W. 22), Harprashad (P.W. 24), Battu (P.W. 25), and Shri Shyam Bharose, Chief Electoral Officer, Bhopal (P.W. 21). Out of these witnesses the evidence of the Chief Electoral Officer, Bhopal, far from supporting the petitioner, in our opinion, is fatal to his case on this point. In para 5 of his deposition the witness states in examination-in-chief itself that by having a look at the duplicate of the working copy sent to the Presiding Officer, he finds that the voters of both the areas were included in the Voters' Lists attached to Misrod Polling Station. The voters of Habibganj were shown as serial Nos. 816 to 841 while those of Misrod Station were shown as S. Nos. 842 to 882. We are doubly assured of the correctness of this position by the evidence of another officer concerned namely the Returning Officer, Shri M. B. Malhotra (R.W. 2), who produced the copy supplied to the Presiding Officer. In the face of this evidence, supported by the above official record, the evidence of Shri Gulam Kibria (P.W. 22), is robbed of its correctness and much of its significance particularly so, when this witness prefaced his evidence with "I think" and stated the facts only from his memory.

41. The circumstantial evidence in the case also points out to the inaccuracy of the evidence of Shri Gulam Kibria. It is an admitted fact that at this Polling Station, the petitioner and the respondent had their polling agents respectively. If this defect, in regard to Misrod and Habib Ganj Areas in fact existed in the Electoral Roll, they would have made a joint application to the Presiding Officer as they did in the case of Shahpur village and Shri Gulam Kibria himself had in that case permitted the Shahpur voters to vote. But in this case no such request written or oral was admittedly made. This conduct of both the Polling Agents serves to show that Lists of the Voters of the areas in question were there.

42. The evidence of witnesses Harprashad and Battu is unreliable. They made no such requests, written or oral, to any officer that they be permitted to vote nor was any request made on their behalf by anyone of the Polling Agents. The evidence of one cancels that of the other. Each one of them says that when he was not permitted to vote, he communicated to the Station Master and in consequence other voters did not go to the Polling Station. We have, therefore, no hesitation to hold on this issue against the petitioner.

43. *Issue No. 2(B) (c).*—We have already held the evidence of the witnesses Battu (P.W. 25), and Harprashad (P.W. 24), as unreliable. Battu is not even asked whether he would have voted for the petitioner. We, therefore, hold that there is no reliable evidence to hold that any of the voters of Habib Ganj and Misrod areas desired to vote for the petitioner. We have reached the conclusion that the voters were not prevented from voting because of want of Lists of Voters, consequently the question whether petitioner was deprived of votes on that account, does not arise.

44. *Issue No. 2(B) (d).*—There is no evidence on this point except a bald statement of the respondent (R.W. 1).

45. *Issue No. 2(B) (e).*—This issue does not arise.

46. *Issue No. 2(B) (f).*—This issue does not arise in view of the fact that there was no cause for complaint as pointed out above.

47. *Issues Nos. 2(C) (a) to 2(C) (e).*—This issue relates to the allegations of the petitioner that in three different meetings held on the 30th December, 1951, 2nd January, 1952, and 7th January, 1952 respectively false statements were made touching the personal character and the conduct of the petitioner and since these meetings were sponsored by the respondent or his agents and speeches were also delivered by the respondent, his workers, the respondent is guilty of a corrupt practice which would fall under section 123(5) of the Representation of People Act.

48. In order to exactly appreciate the allegations, we might reproduce the relevant provision of law:—Section 123(5) reads as follows:

> "The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to the prejudice the prospects of that candidate's election."

From the above it is clear, that other things apart, the petitioner has got to prove that there was a publication of statements of facts, that these statements were false and that the statements were either believed to be false or were not believed to be true, by the respondent.

49. Before we proceed to discuss whether the alleged statements were in fact made or not, we feel it desirable to state that so far as the falsity of the alleged statements or the belief about their falsity or want of belief in the truth of them is concerned, there is no attempt worth the name, made by the petitioner to prove it. None of the witnesses produced by the petitioner speaks about the falsity of the statements. Neither the respondent (R.W. 1), nor his witness Horilal Pleader (R. W. 3), is interrogated by the petitioner about it. The petitioner himself has not denied each of the allegations specifically and definitely. Throughout his deposition, there is only a laconic statement touching this aspect to the effect: the above propaganda against the petitioner was false. We should have expected the petitioner to deal with each allegation of fact specifically and explain to us how the allegations were false. We do not think a vague suggestion that the propaganda was false, meets the requirements of the case. As regards the requirement of the section that such statements should be believed to be false or should not be believed to be true, by the makers, there has been no attempt at all. The petitioner does not say a word about it in his own evidence. He has not put any such suggestion either to the respondent or his witness Horilal during their cross-examination. It is the settled principle of law that it is the duty of a party to put the allegations, he makes, to the adverse party and his appropriate witnesses to admit or deny them. This is based upon the idea of fairness and justice that before any allegation is proved against any person, he should be given an adequate opportunity to explain his position. The petitioner did not follow this sound principle, when he cross-examined the respondent and his witness Horilal. If they had been asked questions about the falsity and their behalf about the truth

or otherwise of the statements imputed to them, we are sure they would have been able to say something about it. Under the circumstances, we are not prepared to take the above important requirements of the section for granted, as the petitioner seems to have done. We accordingly hold that there is nothing on record to persuade us to believe that the alleged statements, even if made, were false or that the respondent and his agents believed them to be false or did not believe them to be true.

50. The petitioner's counsel attempted to explain these infirmities in his case by a suggestion that allegations in regard to cow slaughter against a Hindu, particularly the petitioner who is a Pandit, are so absurd that they should be taken to be false perse and as such there is no need to prove the falsity of these statements. Similarly he suggested that there was no necessity of proving that the respondent and his people believed these statements to be false or did not believe them to be true as they, being Hindus, are bound to believe that these statements in respect of the petitioner, who is a Hindu, are untrue. In order to assess the true value of this argument we might examine the statements actually alleged to have been made in connection with cow slaughter.

51. In Schedule 'C', para. 1, the statement alleged to have been made in connection with cows runs as follows:—

> "The petitioner associates and has dealings with butchers and if elected, he will be instrumental to cow slaughter which was for the time-being forbidden in Bhopal."

This statement is alleged to have been made on 2nd January, 1952, and is said to have been repeated at the other two meetings.

52. Analysing this statement we have been unable to understand how it can be presumed that the statement that "the petitioner associates and has dealings with butchers", if at all relevant, is necessarily false. In the first place how can association and dealings with the butchers necessarily import the idea of cow killing. Associations and dealings with a human being do not necessarily mean in respect of his profession. The words "associations and dealings" are so vague that they are not understandable and can hardly sustain a conclusion, much less a conclusion that they are false. The remaining portion of the statement that "if elected he (petitioner) will be instrumental to cow slaughter" is mearly a matter of opinion about the future conduct of the petitioner and is not relevant for the purpose of section 123(5) of the Act.

53. We now consider whether the alleged statements were at all made. The evidence adduced by the petitioner is merely oral. We do not, for a moment, suggest that the oral evidence unsupported by documentary evidence is always unreliable. But what we desire to emphasise is that documentary evidence of unimpeachable character does lend assurance to the oral word. That assurance is singularly lacking in this case The allegations in this case are undeniably grave and consequences flowing therefrom are exceptionally far-reaching. The consequences are not confined to the mere parties; they go beyond them and affect all those who are proved to have taken a part. Section 99 of the Act is perhaps a departure from the usual law. It enjoys certain obligations on the Tribunal which do not obtain in ordinary cases. The Tribunal besides giving the decision on the case between the parties, under section 98 of the Act, must make appropriate orders in cases of allegations of corrupt practices, against all those who have been guilty thereof. This being the position, we can reasonably expect oral evidence of a kind that can inspire implicit faith. In this case we feel the evidence adduced falls short of the above standard.

54. We could devote some space to detailing discrepancies between the evidence of different witnesses but we would prefer to rest our conclusions on board principles of law and general probabilities of life.

55. It is not disputed that meetings could be held. It is also conceded that a proper and fair propaganda for canvassing votes for a candidate is a recognized mode of carrying on election campaign. Therefore, the heart of the matter is whether alleged offending speeches were in fact made.

56. Out of the three meetings alleged, the two meetings in Sitaldas's Bagia held on the 30th December, 1951 and 2nd January, 1952 appear to be intertwined and have been actually mixed up in evidence. Therefore, it will be convenient to dispose of the question of the third meeting alleged to be held at Bairagarh on the 7th January, 1952, first, as it requires a very short discussion.

57. So far as this meeting at Bairagarh is concerned the petitioner has set out the particulars about it in Schedule C, para. 3. It is stated that the respondent addressed the meeting. There is no reference in this paragraph to any other speaker. The question is whether this allegation, that the respondent delivered the objectionable speech, is substantiated by the evidence adduced. Evidence in regard to this meeting consists of the testimony of the petitioner (P.W. 1), Lalaram (P.W.7), Chunnilal (P.W.8), Thakur Prashad (P.W. 18) Hiralal (P.W. 19) and Abdul Gaffoor (P.W. 20). Out of these witnesses none, but the petitioner himself has deposed that the respondent spoke at the meeting. There are discrepant versions as to the persons who spoke, but there is complete uniformity in the evidence of all the witnesses except the petitioner in that none of them suggests that the respondent made a speech. In the state of this evidence, can we possibly hold on the mere statement of the petitioner, uncorroborated as it is, by even a single witness, and definitely contradicted by all that the allegation, that the respondent made the offending speech, is proved? We think there is no need for further comment. We hold that the respondent did not make a speech, much less utter the words attributed to him even if we assume that there was a meeting held as alleged.

58. It is urged that it is in evidence that some people on behalf of the respondent and with his connivance uttered the prejudicial words and that is sufficient for the purpose of the petitioner. We are unable to assent to this proposition. Assuming that Shankerlal Sharma, Siramal, Jagannath, as suggested by the petitioner, and Tulsiram and Jaggannath Patel, as deposed to by Lalaram (P.W.7) and Naralnsingh, as stated by Chupnilal (P.W. 8) and Lachhmi Narain and others, as suggested by Abdul Gaffoor (P.W.20), spoke at the meeting and made the offending speeches, we do not think the petitioner is entitled, in law, to ask us to consider this evidence in his favour. This evidence is beyond the pleading and must be ignored. We cannot throw overboard the well-settled principle of law as laid down by a succession of Judicial Decisions including those of the Privy Council, that no amount of evidence can be looked at the work into a plea not taken in the pleadings. It was not pleaded in Schedule 'C' that the persons now named in the evidence spoke at the meeting. It was imperative for the petitioner to have named them in the Schedule if he wanted to rely upon their statements as a ground. Section 83(2) of the Act in this connection is very clear. Under this provision it was required of the petitioner to set forth full particulars of any corrupt practice alleged by him, including as full a statement as possible as to the names of the parties, alleged to have committed such corrupt practice in the list signed and verified by him and annex to the petition. Then the petitioner, in pursuance of this provision, made out Schedule 'C' and annexed it to the petition. It was thus his bounden duty to have set forth the names of all those persons in the Schedule prepared by him. Not having done so he is precluded from leading any evidence as regards their statements. That the Schedule is a part of the pleading is clear from the fact that it is required, by section 83(2) of the Act, to be signed and verified as the petition itself and annexed to it, and further it could be amended only with the permission of the Tribunal—a provision analagous to the amendment of pleadings. The petitioner had a right, under section 83(3) of the Act, to move for amendment of the particulars shown in the Schedule 'C'. He did not avail of it. The necessary consequence therefore, is that he is to be confined to the particulars originally mentioned in the Schedule and those particulars do not make a reference to the persons whose speeches are now sought to be introduced and to be relied upon.

59. The analysis of the petitioner's case on this point, therefore, is that what the petitioner pleaded he has not proved by evidence and what he has attempted to prove by evidence was not pleaded and therefore, such evidence is to be discarded. In the result our finding is that the respondent, who alone was alleged to have made the objectionable speech at Bairagarh, did not make any such speech. Should we have thought it nesessary to determine whether the words imputed were objectionable in law, we would have no hesitation to hold that there is no proof of that either. The exact words are not proved which is so essential to a conclusion that the words were objectionable. That it has not been possible for the petitioner to have proved the exact words is demonstrated from the variety of versions given by the different witnesses. It is needless to labour this any more in the view that we have taken which was eventually conceded by the petitioner. It is sufficient to state that the evidence at least of some of the witnesses i.e. P.Ws. 18 to 20 shows that the statements were not outside the purview of the legitimate propaganda and did not at all concern the personal character and conduct of the petitioner as required by section 123(5) of the Representation of People Act. Thakurprasad (P.W. 18) states:

"He said that during the Congress rule cow slaughter has been going on and that it will continue if votes were given in favour of the petitioner and therefore the votes should be cast in favour of the respondents."

Hiralal (P.W. 19) deposes:—

One Sharmaji said that Congress gets cows slaughtered and that if you vote for the candidate of Hindu Maha Sabha there will be victory for the religion and that the respondent is a candidate for Hindu-Maha-sabha."

Similar is the version of Abdul Gaffoor (P.W. 20).

He says:—

"Narainsingh said that Congress gets cows slaughtered and that votes should be given to Hindu Maha Sabha for the sake of religion."

These alleged statements speak for themselves and need no comment.

60. We now come to the two meetings in Sitaldas's Bagia. Out of these two meetings, the meeting of 2nd January, 1952 has been referred to by only three witnesses *viz.* the petitioner himself (P.W.1) Parasram (P.W.14) Ram Prashad (P.W.16). The evidence of Parasram and Ramprashad runs counter to the case of the petitioner in the Schedule 'C' is that meeting of the 2nd January, 1952 was addressed by one Jagannath. There is no mention of Horilal Pleader so far as this meeting is concerned. The evidence of these two witnesses speaks only of Horilal Pleader and makes not even a passing reference to the speech of Jagannath. On the principle, we have adopted in regard to the meeting at Bairagarh, *viz.* that evidence beyond the pleadings cannot be looked into, we have no alternative but to hold that the evidence of these two witnesses is of no avail to the petitioner. The result is that there remains only the word of the petitioner which is contradicted by his own witnesses. We are unable to rely upon the oral and isolated word of the petitioner. Even the petitioner's own evidence is not consistent with his pleadings. His evidence, that Horilal spoke at this meeting is obviously in excess of his pleading which names only Jagannath as the Speaker. Besides the statement alleged in the Schedule that "if elected he (the petitioner) would be instrumental to cow slaughter" is merely an opinion about the future conduct of the petitioner and as such is not a statement of fact.

61. We then pass on to the meeting of the 30th December, 1951. Regarding this meeting we have the evidence of Sitaram (P.W. 9), Bhagwandas (P.W. 10), Ganga Prashad (P.W. 11). Narainlal (P.W. 12), Nandlal (P.W. 13) and Pyarelal (P.W. 15). Witness Narainlal is admittedly interested in the petitioner. He was a polling agent for him at Misrod Polling Station. The other witnesses except for Bhagwandas and Pyarelal, admittedly belong to Congress Party and have Congress bias as such they would naturally be hostile to the respondent who was a candidate for Jansangh. All the witnesses are simple villagers having no pretensions to any high degree of intelligence or education. None of them has given the exact date of the meeting. It is singularly astonishing that although two meetings are alleged in the same place none of these witnesses has shown even awareness of the 2nd meeting. It would have been perhaps only natural if they had alluded to two meetings although they might have been present at one. Curiously, however without mentioning two meetings, they have testified to the combind speeches of the two meetings and perhaps more, at one meeting. The petitioner's case, as laid in the Schedule, is that Jagannath alone spoke at the meeting of 2nd January, 1952 and Horilal spoke at the meeting of 30th December, 1951. These witnesses swear that both these persons and in addition one Sharma spoke at the meeting of the 30th December. Ordinarily this discrepancy may or may not have been a factor to affect the testimony of these witnesses, if they were otherwise worthy of credence. But under the peculiar circumstances of this case, in which preciseness in evidence is the most material thing, this discrepancy does speak volumes about the capacity of the witnesses to remember things. If preciseness is some how lacking either because of dishonesty of witnesses or lapse of their memory or want of sufficient degree of—intelligence, the evidence becomes worthless and our conscience remains untouched.

62. We are asked in this case to accept certain words imputed to the respondent and his workers and deduce therefrom the conclusion that the voters have been misled and the chances of the petitionr's success have been prejudicially affected. Before we can deduce the conclusion asked for, we must have before us the exact words used. And in order that we should have exact words, we should have, in absence of a written testimony which alone can guarantee exactitude and preciseness of the words used, oral evidence that is reliable not only in point of integrity, but capacity to reproduce the exact words. We were not impressed with the capacity

of any of the above-named witnesses, produced by the petitioner, to reproduce the precise words. As we have stated above, most of the witnesses are admittedly partisans and all of them without exception, lacking that degree of intelligence which can grasp the words in their true import and reproduce them without damage. We have marked these witnesses while giving evidence before us. They were too simple to understand the exact meaning; they appeared to us to be too untrained to be able to retain the exact words. They were given evidence after a lapse of about a year and about something they were, by no means, required to be particular and even if they were asked to be particular, it would be a feat of human memory for them, to faithfully repeat the same words that were uttered. It is too dangerous to rely upon these uneducated simple villagers like the once we had before us in the matter of preciseness of words assuming that they were trying to speak the truth. It has been held in Sedition and like cases that unless there is a simultaneous reduction of the speech to writing in short-hand and that is deposed to by the short-hand-writer, there can be little guarantee of the words uttered. We do not see why this salutory principle should not be applied to a case like this.

63. No two witnesses agree in the words that they attribute to the alleged speakers. To illustrate our view point it is enough if we give but one instance. Sitaram (P.W.9), while speaking of Horilal's speech among other things, deposes that Horilal said that "he (the petitioner) gets the cows killed". The petitioner's own account of Horilal's speech in connection with cows is:

> "He (the petitioner) has dealings with butchers and has never tried to put an end to cow slaughter."

Now having dealings with butchers and not trying to put an end to cow-slaughter is obviously something vastly different from getting the cows killed. This one instance alone shows how dangerous it is to rely upon oral account of the words spoken about a year back. Besides, as already stated in connection with the meeting of the 2nd January, it has been stated in the Schedule that "if elected the petitioner will be instrumental to cow-slaughter." This is not a statement of fact, but a mere opinion

64. We can not omit to mention, before closing our discussion on this issue, one important circumstance which either makes the allegations regarding the speeches, improbable or too trivial to be taken note of. The circumstance alluded to above, is the conduct of the petitioner himself. At least at two of the meetings he was, as alleged by himself, present. It is admitted by all the witnesses of the petitioner that no objection was made by the petitioner or by any one on his behalf to the alleged speeches at the meeting. Not even an oral complaint was made to any authority. This conduct of the petitioner shows that either the speeches were not made and as such there was no occasion for any objection or they were harmless enough as not to cause any stir in the mind of the petitioner. In either case, the story of the petitioner becomes unconvincing.

65. In the result our finding on this issue is that it is not proved that any such offending statements were made either by the respondent or by any of his partisans or workers, much less by strangers on behalf of the respondent and as such no question of prejudice to the petitioner or affecting the result of the election arises.

66. *Issues Nos.* 2(*D*) (*a*) *to* (*D*) (c).—The petitioner alleges that the respondent and his agents used, hired and procured four vehicles for the conveyance of lectors to the Polling Stations and back and therefore, the respondent committed a corrupt practice as defined by section 123(6) of the Act. The evidence in this connection, on the petitioner's side, consists of the petitioner (P.W.1), Hari Narayan (P.W.2) and Kamuruddin (P.W.3). They state that voters were driven to the Polling Stations and back at the instance of the respondent. The respondent has denied the allegations altogether. He has himself gone into the witness-box and has also examined Tikamchand (P.W. 6). The respondent's counsel has denounced the allegations against his client as wholly untrue and has pointed out certain legal and factual defects in this part of the petitioner's case. In the first place the respondent's counsel contended, no proper particulars were given in the Schedule 'D'. Schedule 'D', according to him, consists of merely vague allegations as most essential particulars were lacking. For instance it was pointed out, the names of the voters conveyed in the vehicles were not shown, so also the villages from which the voters were conveyed were not stated. Whose property the vehicles were, whether they were owned by the respondent or hired by him; by whom these vehicles were driven, all these particulars were essential and had been deliberately omitted, contended the respondent's counsel, in order to keep the respondent in the dark. There would appear to be considerable force in these suggestions.

67. It was necessary that names of the voters should have been shown and also the villages from which they were conveyed. The petitioner also should have shown which of the vehicles were hired, if any. The Schedule furnished by the petitioner in this respect does not appear to be in conformity with the requirements of section 83(2) which requires that full particulars of corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such practices etc. should be given. The Schedule does not show at all whether the respondent himself took the voters in the cars or some agent of his or any body else.

68. Defective as the schedule is, the evidence is much more so. The evidence of Harinarayan (P.W. 2) is improbable in the extreme. He is unable to give the name of any village even, from which he conveyed the voters, not to speak of the names of the electors. We can not believe him. He is supposed to have plied the car No. B.S. 1588, belonging to deceased Sardarmal Darra for 2-3 days, after the latter's death. It is in evidence of the respondent himself that Sardarmal Darra died in the evening of the 2nd polling day *i.e.* the 13th January, 1952. That means this car, if at all used was used latest on the 15th or even later. But the Schedule 'D' shows that this car along with other 3 cars was being used from the very beginning of the polling *i.e.*, 11th January, 1952. Hari Narain says in his evidence that he conveyed voters to Bagroda Polling Station while there is no mention of Bagroda Polling Station, in the Schedule 'D' at all. He can not give the name of any worker of the respondent who accompanied him during the entire period. It is not necessary to say anything more about this witness. The defects pointed out above are sufficient to discredit his evidence. But one legal objection, which will be common to the evidence of this witness as well as of Kamruddin (P.W. 3) may be pointed out before taking up the evidence of the latter. Both these witnesses, by their own showing, are parties to the corrupt practice as such they are accomplices, and under the established principles of evidence, evidence of accomplices should not be accepted except when corroborated in material particulars. There is nothing to corroborate the evidence of these witnesses. If we exclude the evidence of these two witnesses, the case of the petitioner collapses on this point. The evidence of Kamruddin even otherwise does not inspire any confidence. He too is unable to give the names of any voters alleged to have been conveyed by him. Further he exposes himself when he says that he used to go inside the Polling Station (booth) and he saw the voters actually casting their votes. Is this not an obvious improbability?

69. The upshot of the above discussion is that we are unable to believe the allegations and as such we hold against the petitioner, on this issue.

70. *Issues Nos.* 2(*E*) (*a*) *to* (*E*) (*c*) *and* 2 (*F*) (*a*) *to* (*F*) (*e*).—These two issues may be taken up together as they are almost overlapping and relate to the same matter *viz*: the expenses incurred by the respondent in connection with Election and the Return of Election Expenses submitted by him.

71. The Legislature has designedly laid some limitations on the candidate as regards the amount to be spent by him and also as regards the mode in which he can spend. These limitations serve as a valuable check over a candidate so far as a tendency to resort to corrupt practices is concerned. It will, therefore, be the plain duty of any Tribunal to keep the candidate within the strict limits prescribed by law and not to view any deviation lightly if a clear case for a deviation is made out.

72. Now so far as the maximum limit of expenses goes the Legislature in the case of a single Constituency has fixed it at Rs. 2,000 and as regards the persons to be employed for payment in connection with election by a candidate, they are shown in Schedule VI. Supplementary to the Schedule is rule 118 of the Representation of People Rules, 1951 which contains a prohibition against employment for payment by a candidate of persons other than or in addition to those shown in Schedule VI.

73. Under this issue it will be our aim to see whether the respondent has faithfully followed the mandates contained in the above provisions, if not, with what result.

74. It is the case of the petitioner as disclosed in the Schedules 'E' and 'F', that the respondent has transgressed both the limits indicated above and has also shown false particulars and details in the Return lodged by him.

75. In regard to the transgression of the maximum limit of expenses the petitioner has not been able to point anything. Even if his allegations made in the two schedules are taken at their face-value, it does not appear in the least that the respondent has exceeded the limit placed by law. So far as the question of employment for payment of persons other than permitted by law, is concerned,

we are unable to agree with the petitioner in the instances he has cited. He has given two instances: According to him, one Ramgopal was employed by the respondent as his clerk in addition to one Hazarilal Vohra and also one Hariram was employed by him for payment for doing his election work. Out of these two, regarding Hariram, the petitioner's learned counsel at the time of arguments, fairly submitted that he did not press this allegation as he has not been able to prove it. Therefore, we hold that it is not proved that Hariram was employed by the respondent for payment in connection with election.

76. As regards Ramgopal, although it was strongly pressed by the petitioner's counsel, we are not able to agree. The respondent has denied it. Ramgopal himself has gone into the box and he has also denied that he was employed for payment in connection with election. The respondent has produced Power of Attorney (Ex. R-8) which is registered and it shows that Ramgopal was already doing some clerical work of the respondent and he is described as 'Munshi' Ramgopal in the Power of Attorney. The respondent has explained that when he has described Ramgopal as Clerk in the Return of Election Expenses, he has not described him so because he was his clerk in connection with election, but because he was a 'Munshi' doing clerical work generally and that he has merely translated the word 'Munshi' as clerk in English. We think the explanation is reasonably convincing. The respondent has merely described Ramgopal as clerk in the column relating to name and description of payees. This can not be treated as respondent's admission, that Ramgopal was his clerk in connection with election and that any payment was made to him on account of election work. There is no evidence that Ramgopal worked as a clerk to the respondent in connection with election or that he was regularly employed in any capacity for election work. We, therefore, hold that the petitioner's plea in this connection is not proved.

77. But while we were not able to hold with the petitioner so far as the instances cited by him are concerned, we thought there was yet another instance of employment for payment, perhaps in connection with election, but the respondent, which had to be scrutinized. It is an admitted fact that Jamuna Prashad was employed by the respondent as his driver during the course of election. His salary actually has been shown in the Return of Election Expenses. His employment, might perhaps have been a violation of the law. In order to fully appreciate this position we give below what persons are permitted by law, to be employed for payment in connection with election. Schedule VI to the Representation of the People Rules, 1951 provides as follows:—

"Persons who may be employed for payment by candidates or their election agents in connection with elections:

At all elections:—

(1) One election agent,

(2) One counting agent, and

(3) One clerk and one messenger:

Provided that in the case of an election in a Parliamentary constituency or an Assembly constituency or a Council of States constituency the number of clerks and messengers who may be employed for payment shall be one clerk and one messenger for every seventy-five thousand electors on the electoral roll of the constituency or portion thereof.

At elections in which the method of voting by ballot boxes is followed the following persons may be employed for payment in connection with each such election in addition to the persons specified in (1), (2) and (3) above, namely:—

(a) one polling agent and two relief agents for each polling station or where a polling station has more than one polling booth, for each polling booth or for the place fixed under sub-section (1) of section 29 for the poll and;

(b) one messenger at each polling station or where a polling station has more than one polling booth, at each such polling booth or at the place fixed under sub-section (1) of section 29 for the poll."

Rule 118 of the Rules *ibid* is to be read along with the Schedule. Rule 118 reads as under:—

"118. *Number of persons who may be employed for payment in connection with elections.*—No person other than or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election."

If Jamuna Prashad is held to have been employed in contravention of the Schedule and the Rules thereunder, the result would be that the respondent became guilty of corrupt practice as defined in section 123 (7) of the Act. Section 123(7) lays down as follows:—

"123. *Major corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(7) The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder."

78. We therefore, in order to clear our doubt, gave a notice to the parties to address us on this aspect of the question. The arguments were heard at some length. On deeper consideration we feel that the employment of Jamuna Prashad as a Driver for payment, by the respondent, would not properly be hit by Schedule VI read with Rule 118 of the Rules. We briefly record the contentions that were raised before us in this connection. The respondent's learned counsel, in the first place, submitted with great vehemence that the point not having been raised by the petitioner, we had no power to go into it. We do not agree with the learned counsel for the respondent on this point. This point arises from his own documents, pleadings and evidence. We are not debarred from raising a correct legal inference from the case of the respondent himself merely because the petitioner somehow or the other failed to draw the necessary legal inference. Besides it will be seem that a corrupt practice under the Representation of People Act is not viewed by the Legislature as a private wrong, but as a public one which affects the purity of elections. It is against the public policy that corrupt practices should be restored to in elections. It is the settled law that in matters of public policy, it is the duty of Courts to take notice of any transgressions that come to light and deal with them according to law, irrespective of whether the transgression is pleaded or not by the party. We, therefore, think we have a right to inquire into this matter although the petitioner has not pleaded it.

79. It was next argued by the respondent's learned counsel that employment within the meaning of the Schedule VI, rule 118 of the Rules and section 123(7) of the Act must be employment "in connection with election", otherwise it will not be an infringement of the law. He argued that employment of a driver during the course of election can never be construed to mean an employment "in connection with election." In other words he suggested that employment must be intimately connected with the work of election campaign and it has no reference to rendering of services which will always be required by the candidate and his workers during the election in a number of ways. He contended that during the course of election campaign, on account of additional activities, there is bound to be a need for additional employees to render services and if every employment for securing services for the candidate and his workers is viewed as falling under Schedule VI, rule 118 of the Rules, then no candidate can escape being guilty of corrupt practice within the meaning of section 123(7) of the Act. We think there is great force in this argument. We think a difference must be maintained between an employment that is merely "incidental to election" or "on account of" it and employment "in connection with election." If an employment is merely "on account of" or "incidental to" the election, it will not be covered by Schedule VI and rule 118 of the Rules. Employment of persons to secure the personal services or services for the workers etc. would, in our opinion, be employment that is only "on account of" or "incidental to" the election and not "in connection with election." We are supported in our reasoning by the language used in the prescribed form No. 26, under rule 112 of the Representation of People Rules and Schedule IV for lodging of the Return of Election Expenses. Clause 2 of this prescribed form itself shows that the Legislature has used the Expression "in connection with" in a sense different from that in which the expressions "on account of" or "incidental to" the election are used otherwise the Legislature would not have used three different expressions. Clause 2 reads as follows:—

"Including all payments made by the candidate or by his election agent or by any person on behalf of, or in the interests of, the candidate in respect of any expenses incurred on account of in connection with or incidental to the election, and all unpaid claims in respect of any such expenses of which the candidate or his election agent is aware—"

If in clause 2 the only expression used had been "in connection with" and the respondent had shown the pay of Jamuna Prashad driver in the Return of Election Expenses, the employment of Jamuna Prashad would necessarily have been deemed to be "in connection with" election, on the respondent's own showing. But as it is, there are other two expressions as well used by the Legislature and

therefore merely because the respondent has shown the pay of Jamuna Prashad driver in the Return of Election Expenses, we can not necessarily conclude that his employment has been shown "in connection with" election and not as "incidental to" or "on account of" election.

80. Besides we are of the view that there is nothing in the evidence or pleadings of the parties to suggest that this Jamuna Prashad did take any part in the election campaign. All that can reasonably be concluded from his employment as driver, is that he rendered service to the candidate by driving him or his workers to some place, during the course of election. This kind of service would more appropriately deserve the appellation of employment "on account of election" rather than "in connection with election." If we hold the other view and conclude that the candidate is debarred by virtue of Schedule VI and rule 118 of the Rules, we will be rendering Part A, C and D of the Return of Election Expenses nugatory and meaningless. Under Part A, the candidate is permitted to incur expenses including travelling expenses for himself and his election agent. Similarly under Part C and Part D travelling expenses could be incurred on account of agents, clerks and messengers and other persons. Travelling expenses, as mentioned in Part A, C and D, not being confined to a particular mode of travelling, it can reasonably be concluded that travelling could be done by a car as well. If travelling by car is permitted, then there could hardly be a restriction over employment of a driver for that purpose. We, therefore, are of the opinion that there is no embargo on the employment of a driver of a car during the course of election. In this view there is no corrupt practice committed by the respondent by his admitted employment of Jamuna Prashad as his driver.

81. Regarding Schedule 'F' in respect of the Return of Election Expenses furnished by the respondent, the petitioner alleges that it is false in material particulars and he has set out these particulars in Schedule 'F'. The petitioner has deposed to these allegations in paras. 8 and 9 of his deposition. The petitioner stated, that the respondent has not shown an item of Rs. 25-12-0, the amount spent by him in the purchase of Voters' List. It is also alleged that some money was paid to Hariram by the respondent and this has also not been shown in the Return of Election Expenses. Similarly it is alleged that the motor-drivers' pay and their diet money has not been shown. But the petitioner had to admit that he has no personal knowledge about these items and eventually the petitioner's learned counsel conceded that he does not press for these items. The respondent, on the other hand, has sworn that these allegations are not correct. He denies that he spent Rs. 25/12/- as alleged. The price of the Electoral Roll *i.e. Rs.* 25/12/- is covered by Challan No. 1134 dated 19th January, 1952. The respondent denies having signed it. There is no proof that it was signed by the respondent or anyone on his behalf. Even otherwise it would appear to be ridiculous that the respondent would purchase Electoral Roll on 19th January, 1952 when the election admittedly was over on 17th January 1952. There is no proof for the other allegations that money was paid to Hariram or that the Drivers' pay and their diet money has not been shown.

82. Regarding amounts paid to Shri Ansari, the petitioner himself has not said a word about it in his own deposition. The respondent has explained the position. He states:

> "The witness purchased petrol during the election period from one Ansari. Towards the purchase of petrol the witness paid Rs. 40/13/- on 7th January, 1952 and Rs. 203/4/- were paid by him on 10th March, 1952. The petitioner has filed the vouchers and the receipts. This amount of petrol purchased by the witness has been shown by him in the Return of Expenses in three parts *viz.*: Part A, C and D. The vouchers given by Shri Ansari are dated 17th March 1952. Kachha receipt was given by Shri Ansari to the witness on 7th January 1952. The Kachha receipt was returned to Shri Ansari on his giving a Pacca receipt to the witness."

There is nothing incredible or improbable about this explanation. We see no reason to doubt the truth of it. We, therefore, accept it.

83. As regards payment to Jamuna Prashad driver, the respondent has explained that Rs. 135/- and some annas shown in the Return of Election Expenses were paid to Jamuna Prashad *vide* voucher No. 13 in lieu of his pay, refreshment and also repairs. The omission of pay and repairs in the voucher, he suggests, was through a clerical error. We believe him as there is no strong circumstance to show that this could not be so.

84. As a result of our finding the respondent is not guilty of a corrupt practice falling under section 123(7) of the Act.

85. *Issues Nos. 2(G) (a) to (G) (c).*—In para. 5(g) of the petition the petitioner complains of a systematic appeal to the voters by the respondent, his agents and other persons with the knowledge, connivance and instigation of the respondent, to vote for the respondent and refrain from voting for the petitioner by means of religious oaths and persuations.

36. In proof of this "systematic appeal", the petitioner has chosen to cite only one solitary instance shown in Schedule 'G'. The scene is laid at the well of one Chandmal Daga. Some 200 voters of village Baodia Kalan are alleged to have somehow collected at the well although they were pursuing a road some distance away from the well. It is not alleged that oath was individually administered, it is alleged that oath given to one Ramsingh who is the Patel of mouza Baodia Kalan village. The oath was of Gangaji and vote for the respondent was asked for. Some 70-80 people inclusive of the three witnesses (P.Ws. 4 to 6) returned home without casting vote at the Misrod Polling Station for which they were bound. Their come-back home without exercise of their franchise was presumably out of fear and regard for the oath, assuming that oath administered to one man, be he a Patel or anything, could strike fear and awe in the minds of all those who were present. Yet strange enough their retreat carried with it the direct defiance of the oath in as much as what was asked on oath was a vote for the respondent and that very thing these people failed to comply with by coming away home. There would appear to be a strange inconsistency in this sort of conduct that a man under the influence of an oath and out of regard for it should do something that was obviously inconsistent with the boon asked for on the oath. If they were under the spell of oath, as their story goes, they would have gone to the Polling booth for voting for the respondent, but if they were not, then also their destination would have been polling booth for which they were already bound. Going away home without casting their votes is an unnatural story. No reasons would seem to be assigned for this altogether a different step from the one directed by the oath. The unnaturalness of the story will be plain when we consider the answer of Hiralal (P.W. 4). Asked about his decision to vote for any candidate, he replies: "Till the time they reached the well of Chandmal the witness had no particular idea for whom he should vote." If this was the state of his mind and if it were true that he came under the influence of oath, the only reaction we could have expected from this man would have been that he would rush to the Polling Station and vote for the respondent and thus be true to the oath.

37. We do not think it is possible to conceive of a regard for oath and also disregard for it, in the same breath. There is no allegation that they were under the influence of a counter oath in favour of the petitioner. Therefore, there appears to have been no need for them for a neutral attitude. The first three witnesses *viz*: Hiralal (P.W. 4), Radhakishan (P.W. 5), examined on 26th November 1952 and Ramprashad (P.W. 6) examined on 27th November 1952, do not speak of any commitment in favour of the petitioner which might have neutralized the effect of oath, but on the contrary as we have shown above, witness Hiralal definitely speaks of indecision and non-commitment till the last moment. This apparent inconsistency and unnaturalness of the story seems to have gone home to the petitioner a little too late, for the remaining witness Ramsingh Patel (P.W. 26) who is not only the last of the batch of the aforesaid three witnesses, but is absolutely the last witness examined for the petitioner examined as P.W. 26 on 17th December 1952, endeavours to repair the damage done by the previous witnesses and states for the first time that the village people, 2-3 days prior to the incident had decided to vote for the petitioner. We do not believe him when he says so, for had it been so, other three witnesses would have also said so, more than this, this witness admits in his cross-examination that he had made a speech on the loud-speaker at the request of the respondent. This shows that he was sometime before the incident for the respondent and as such we cannot believe the decision referred to by him. This witness, who is the Patel, being for the respondent, the decision if any, must have been favourable to the respondent and as such there could have been no need for the alleged oath. If we disbelieve the version of a previous decision in favour of the petitioner, the story told by these witnesses would appear to be wholly unnatural.

38. To show the untruthfulness of this story we need mention only one more circumstance which would prove that the whole incident is fishy. We have already endeavoured to show that the alleged conduct of retreat towards home without exercise of vote is inconsistent with the oath and unreliable. We are fortified in our opinion when we have evidence that at least two witnesses namely Ram Prashad and Balkrishna who swear before us, that they returned home without casting their votes because of the oath, in fact went for voting and actually obtained ballot paper at Misrod Polling Station. The respondent was examined by Shri Malhotra, Returning Officer (R.W. 2) who deposed from the marked copy of the *List of Voters* for Misrod Polling Station, that S. No. 260 (Ramprashad son of Beniprashad) and

S. No. 295 (Balkishan son of Lachhman) were issued ballot papers and to our mind, these two gentlemen are no others than petitioner's witnesses *viz*: Nos. 6 and 5 respectively. Can there be a clearer proof of the falsity of the story put before us?

89. Shri Md. Yakub for the petitioner, when confronted with this aspect of the case, argued that the issue of ballot papers in the names of Balkishan and Ramprashad would not necessarily prove that these very persons were the recipients of the ballot papers. Some others might have done so in the names of these two persons. The argument, though ingenious, is not convincing. The argument proceeds on the assumption of false impersonation although law always presumes in favour of legality and propriety of conduct. The presumption would be that the ballot paper is always issued to a right man unless the contrary is proved. There is no suggestion, much less any material to prove that ballot papers in the case of Balkishan and Ramprashad were issued to some others. There was no attempt made on the side of the petitioner to prove that it was so. We, therefore, cannot accept the suggestion, made at the bar at the fag end, which is contrary to the legal presumption. We, therefore, hold that witnesses Ramprashad and Balkishan did go to the Polling Booth and this fact makes them unworthy of belief.

90. A word about the Schedule 'G' wherein particulars of this incident are given, cannot be omitted to be added. There is no name given of any of the voters persuaded by oath, not even the name of the leader of the party Ramsingh Patel. We think the Schedule is purposely left vague in order that it should offer no obstacle at the time of the evidence. We think this was the most material particular. The names of at least few important persons should have been shown and we could never conceive of the omission of the name of Ramsingh Patel except on a purpose which would not commend itself to any Court of law. We think this incident has all the signs of a made-up affair. We have, therefore, no hesitation in disbelieving it.

91. This issue is decided against the petitioner. The alleged incident could have no repercussions on the election as the incident never existed.

92. *Issues Nos.* 2(*H*)(*a*) *to* (*H*) (*d*).—This issue must clearly be decided against the petitioner. The petitioner has led no evidence in this respect. He has himself said nothing. He has directed no cross-examination on this point. Consequently there is no material. The question of effect does not, therefore, arise.

93. *Issues Nos.* 2(I)(*a*) *and* 2(I)(*b*).—This issue could have gone in favour of the petitioner only when we had accepted the petitioner's case at least on some of the material issues. Our decision on all the material issues is against the petitioner. As a necessary corollary, this issue must be answered in the negative.

94. As a result, the petition of the petitioner fails and is dismissed with costs. He shall pay the costs of the respondent including the counsel's fees which we assess at Rs. 750 on each side.

(Sd.) N. V. SATHAYE, *Chairman.*

The 27th February 1953. (Sd.) W. Y. RADKE, *Member.*

(Sd.) M. L. NIHALANI, *Member.*

ORDER

(UNDER SECTION 99 OF THE REPRESENTATION OF PEOPLE ACT)

The respondent was alleged to have been guilty of corrupt practices by publishing false statements, relating to the personal character and conduct of the petitioner; by using, hiring and procuring vehicles for the conveyance of electors to the Polling Stations and back to their places; by incurring election expenses in excess of the prescribed maximum limit and by lodging a Return of Election Expenses with false particulars; by issuing appeals to the voters by means of religious oaths and persuations; by engagement of persons for payment to canvass and secure votes for the respondent. Our finding is that the above corrupt practices have not been proved to have been committed by, or with the connivance of the respondent or his agent at the election.

2. In view of our order for costs in the main petition, no further order for costs is necessary under this order as no third party is involved.

The 27th February 1953.

(Sd.) N. V. SATHAYE, *Chairman.*

(Sd.) W. Y. RADKE, *Member.*

(Sd.) M. L. NIHALANI, *Member.*

SCHEDULE OF COSTS

		Petitioner			*Respondent*		
		Rs.	As.	Ps.	Rs.	As.	P.
1.	Applications	6	4	0	2	0	0
2.	Powers	1	8	0	1	0	0
3.	Exhibits	0	0	0	0	0	0
4.	Process-Fees	162	15	0	8	7	6
5.	Subsistence Allowance	94	4	0	5	0	0
6.	Commission-Fee	30	0	0	200	0	0
7.	Counsel's Fee (Cert fied	750	0	0	500	0	0
	TOTAL	1,044	15	0	716	7	6

The 27th February 1953.

(Sd.) N. V. SATHAYE, *Chairman*

[No. 19/94/52-Elec. III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

GIPD—DME—1085 G of I Ext.—13-3-53—6865